

EPA Region 5 Records Ctr.



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FILED FOR RECORD BY:
MARY ELLEN VANDERVENTER
LAKE COUNTY, IL RECORDER
12/30/2004 - 01:25:35 P.M.
RECEIPT #: 201311
DRAWER #: 29

Prepared By: Edward P. Kenney
Sidley, Austin, Brown & Wood LLP
Bank One Plaza, 10 South Dearborn Street
Chicago, Illinois 60603

Return To: Sidley, Austin, Brown & Wood, LLP
Bank One Plaza, 10 South Dearborn Street
Chicago, Illinois 60603
Attn: Edward P. Kenney

NOTICE

1. This 30th day of December, 20__, JOHNS MANVILLE, a Delaware corporation, the current owner of the real property located in the County of Lake, State of Illinois, more particularly described on Appendix 1, which is attached hereto and made a part hereof (the "Property"), hereby records this Notice that the Property is subject to certain land and groundwater use restrictions.
2. The Property consists of the approximately 150-acre Johns Manville Waukegan Disposal Area Superfund Site ("the Site or the NPL Site"), which the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983.
3. The Property was used for the disposal of asbestos-containing waste material. The survey plot, including the location, depth, area and quantity of asbestos-containing waste disposed of within the Property, has been filed with the Administrator of the U.S. EPA.

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The Property is subject to the National Emission Standard for Asbestos set forth at 40 C.F.R. Part 61, Subpart M.

4. In a Record of Decision dated June 30, 1987 (the "ROD"), as modified by an Explanation of Significant Differences dated February 9, 1993, and the Second Explanation of Significant Differences dated September 22, 2000, the U.S. EPA Region 5 Regional Administrator selected a remedial action for the NPL Site that provided, in part, for the placement of a vegetative soil cover, asphalt cover, or riprap cover on asbestos-containing waste on the Property and for the placement of land use restrictions on the Property.
5. Johns Manville has agreed to implement the remedial action and the land use restrictions on the Property, in a Consent Decree entered on March 18, 1988, ("Consent Decree") and a First Amended Consent Decree entered on December 1, 2004, ("First Amended Consent Decree") in the case of *United States of America and the State of Illinois v. Manville Sales Corporation*, Civil Action No. 88 C 630 (N.D. Ill.), which requires Johns Manville: (a) to provide a permanent right of access over the Property to the State of Illinois and the United States for purposes of implementing, facilitating and monitoring the remedial action referenced above; (b) to limit permanently the use of the Property, for the purpose of protecting human health, the environment and the remedial action; and (c) to reserve an environmental easement and restrictive covenants running with the land that imposes the land use restrictions listed in paragraph 6 below and is enforceable by the United States and the State of Illinois, if Johns Manville conveys any interest in the Property.
6. RESTRICTIONS ON USE: The following restrictions apply to the Property, unless and until they are modified in accordance with Paragraph 7:
 - 6.1 No disturbance of cover: Except as provided in a plan approved by U.S. EPA with Illinois EPA concurrence, no action shall be taken to excavate or drill or intrude into, or penetrate or otherwise disturb the facility cover demarcated in Appendix 2, which includes the vegetated soil cover, asphalt cover and riprap, or the soils below such vegetative soil cover or asphalt cover or riprap. The vegetative soil cover (consisting of 24 inches of compacted non-asbestos-containing soils and vegetation cover as defined in the Consent Decree and First Amended Consent Decree), asphalt cover and riprap overlay asbestos-containing waste materials on the Property.
 - 6.2 Maintenance of water levels: Surface water on the Property shall be maintained at such levels to ensure that no water-covered asbestos-containing waste materials become exposed until closure of the paper mill ditch, catch basin, mixing basin stages 3, 4 and 5, and settling basin in accordance with the work plans as approved by U.S. EPA with Illinois EPA concurrence.
 - 6.3 No interference with remedy: There shall be no interference of any sort, with the construction, operation, maintenance, monitoring, efficacy, or physical integrity of any component, structure, or improvement resulting from or relating to the

remedial action on the Property implemented pursuant to the Consent Decree and First Amended Consent Decree. No action shall be taken that would cause covered waste materials to become exposed.

6.4 Land uses: The Property shall not be used for any of the following purposes:

- (a) Residential, including any dwelling units and rooming units, mobile homes or factory built housing, camping facilities, hotels, or other unit constructed or installed for occupancy on a 24-hour basis;
- (b) A hospital for humans;
- (c) Educational institutions such as a public or private school;
- (d) A day care center for children;
- (e) Any purpose involving occupancy on a 24-hour basis; or
- (f) Any use that would disturb or penetrate the facility cover as described in subparagraph 6.1 or interfere with the remedy as described in subparagraph 6.3 (e.g. construction of buildings).

6.5 Ground water uses: No activities shall be conducted on the Property that extract, consume, or otherwise use any groundwater from the Property, nor shall any wells be constructed on the Property for purposes other than ground water monitoring, unless approved by U.S. EPA with State of Illinois concurrence.

7. MODIFICATION OF RESTRICTIONS: The land and groundwater use restrictions shall continue until and unless U.S. EPA, with the concurrence of Illinois EPA, approves the modification or rescission of the restrictions, U.S. EPA, with the concurrence of Illinois EPA, may modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 6.1-6.5 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in subparagraphs 6.1-6.5 by submitting to U.S. EPA, the State of Illinois and Johns Manville a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, any proposed revisions to this notice and any proposed changes to the environmental easement and restrictive covenants applicable to the Property. Each application for termination or modification of any restriction set forth in subparagraphs 6.1-6.5 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- (a) the effectiveness of any remedial measures undertaken pursuant to the Consent Decree and First Amended Consent Decree;
- (b) the long term protectiveness of the Remedial Action; or
- (c) protection of human health and the environment.

If U.S. EPA, with the concurrence of Illinois EPA, makes a determination that an application satisfies the requirements of this paragraph, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any approved modification of the use restrictions shall be recorded with the Recorder of Deeds, Lake County, Illinois. Johns Manville reserves its

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right to use the dispute resolution procedures in Section XII of the First Amended Consent Decree concerning U.S. EPA's determination on an owner's application.

8. Access: The Property is subject to an irrevocable, permanent and continuing right of access by the United States, Illinois EPA and Johns Manville at all reasonable times for purposes listed below.
- (a) Implementing response actions in any CERCLA decision document affecting the Property or any associated work plans;
 - (b) Verifying any data or information submitted to U.S. EPA and Illinois EPA;
 - (c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of the First Amended Consent Decree;
 - (d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, and obtaining split or duplicate samples;
 - (e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations and by CERCLA;
 - (f) Implementing additional or new response actions if the U.S. EPA with the concurrence of Illinois EPA, pursuant to authority under applicable law, determine that such actions are necessary.
9. NO LIMITATION OF RIGHTS OR AUTHORITIES: Nothing in this document shall limit or otherwise affect U.S. EPA's or the State of Illinois' rights of entry and access or authority to take response actions under CERCLA, the NCP, or other federal or state law.
10. NO PUBLIC ACCESS AND USE: No right of access or use by the general public to any portion of the Property is intended or conveyed by this instrument.
11. INSPECTION AND ENFORCEMENT: In addition to the access rights set forth in Paragraph 8 and 9 above, the United States, State of Illinois and/or Johns Manville may enter the Property from time to time for the purposes of performing inspections, overseeing remedy implementation or enforcing the restrictions set forth in subparagraphs 6.1-6.5 above after permission from or reasonable notice to the owners or the owners' representative.
12. NOTICES: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Johns Manville
717 - 17th Street
Denver, CO 80202
Attn: Legal Department
Environmental

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United States Environmental Protection Agency
Superfund Division
77 W. Jackson Blvd.
Mail Code: SR-6J
Chicago, IL 60604-3590

Illinois Environmental Protection Agency
Federal Site Remediation Section
Division of Remediation Management
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

13. Appendices

Appendix 1 – Legal description of the Property
Appendix 2 – Land Cover

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IN WITNESS WHEREOF, Johns Manville has caused this Notice to be signed in its name.

Executed this 27th day of December, 2004.

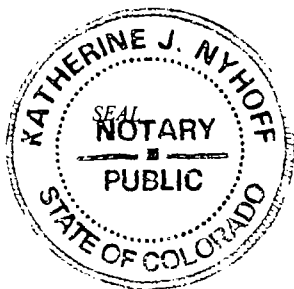
JOHNS MANVILLE

By Roger P. Twisselman
Roger P. Twisselman
Secretary

STATE OF COLORADO)
) ss
CITY AND COUNTY OF DENVER)

On this 27th day of December, 2004, before me, the undersigned, a Notary Public in and for the State of Colorado, duly commissioned and sworn, personally appeared Roger P. Twisselman, known to be the Secretary of Johns Manville, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.



Katherine J. Nyhoff
Katherine J. Nyhoff
Notary Public in and for the State of Colorado

My Commission Expires: May 12, 2005

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APPENDIX 1—Legal Description of Johns Manville Site

Five Parcels of Johns Manville holdings in parts of Sections 10 and 11, Township 45 North, Range 12 East of the 3rd Principal Meridian, Lake County, Illinois described as follows:

PARCEL 1:

THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 10, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 45 NORTH, RANGE 12, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE SOUTH LINE OF SAID QUARTER QUARTER SECTION 320.00 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE EAST ALONG THE SOUTH LINE OF SAID QUARTER QUARTER SECTION 100.00 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 80.00 FEET; THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID QUARTER QUARTER SECTION 100 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING,) ALL IN LAKE COUNTY, ILLINOIS.

PARCEL 2:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN LAKE COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE 100 FEET EASTERLY OF AND PARALLEL TO THE EASTERLY RIGHT-OF-WAY OF THE CHICAGO NORTHWESTERN RAILROAD COMPANY, IN LAKE COUNTY, ILLINOIS.

PARCEL 4:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EASTERLY OF THE EASTERLY LINE OF THE PUBLIC SERVICE COMPANY RIGHT-OF-WAY CONVEYED BY DOCUMENT 453462, IN LAKE COUNTY, ILLINOIS.

PARCEL 5:

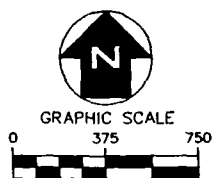
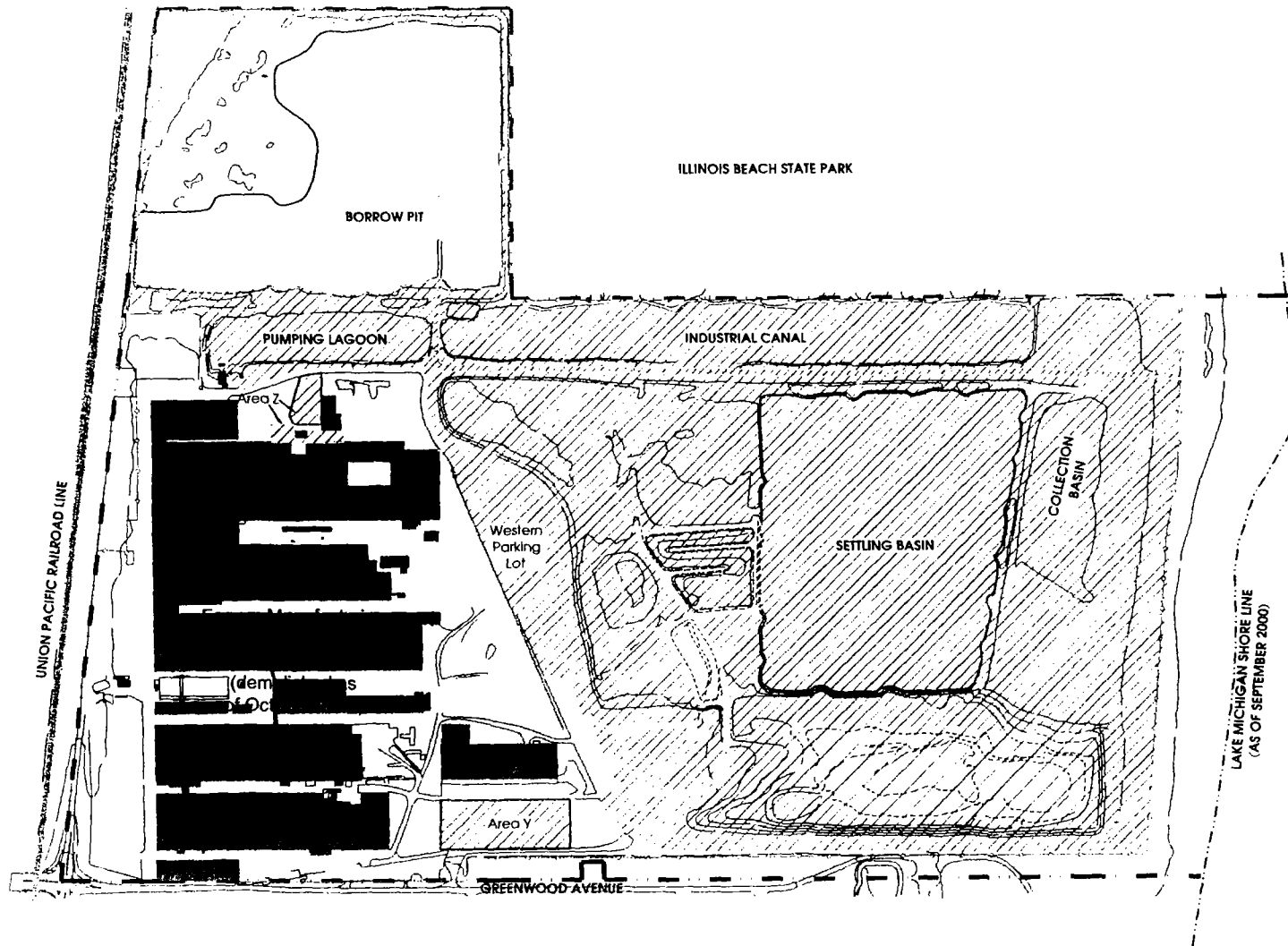
THAT PART OF THE SOUTH ½ OF FRACTIONAL SECTION 11, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE WATERS EDGE OF LAKE MICHIGAN ON MAY 1, 1978, (EXCEPT ANY PORTION THEREOF NOW COVERED BY THE WATERS OF LAKE MICHIGAN), IN LAKE COUNTY, ILLINOIS.

CHI 3123281v1 December 20, 2004 (03:06pm)

Pin # 08-10-300-007
08-10-100-016

1871 North Pershing Road
Waukegan, IL 60087

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December 2004, Revision 0

JOHNS MANVILLE
Waukegan, Illinois

Appendix 2

Land Cover - NPL Site

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